

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

HONORABLE LARRY ALAN BURNS, JUDGE PRESIDING

UNITED STATES OF AMERICA, )  
PLAINTIFF, ) CASE NO. 07CR02898-LAB  
VS. )  
JORGE DANIEL RAMIREZ-ARMAS, ) SAN DIEGO, CALIFORNIA  
VERONICA QUINTERO-NAVARRO, ) DECEMBER 17, 2007  
DEFENDANTS. ) 2:00 P.M.

REPORTER'S TRANSCRIPT

MOTION HEARING, TRIAL SETTING

## APPEARANCES:

FOR THE GOVERNMENT:

KAREN P. HEWITT, U.S. ATTORNEY  
BY: REBECCA KANTER, ESQ.  
ASSISTANT U.S. ATTORNEY  
880 FRONT STREET  
SAN DIEGO, CA 92101

FOR DEFENDANT (1):

LAW OFFICE OF MICHAEL CROWLEY  
BY: MICHAEL L. CROWLEY, ESQ.  
550 WEST C STREET  
SAN DIEGO, CA 92101

FOR DEFENDANT (2):

FRANK & MILCHEN  
BY: HOWARD B. FRANK, ESQ.  
136 REDWOOD STREET  
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COURT REPORTER:

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1 **SAN DIEGO, CALIFORNIA - MONDAY, DECEMBER 17, 2007, 2:00 P.M.**

2 THE CLERK: NO. 29, 07CR02898, UNITED STATES OF  
3 AMERICA VERSUS JORGE DANIEL RAMIREZ-ARMAS AND VERONICA  
4 QUINTERO-NAVARRO FOR MOTION HEARING, TRIAL SETTING.

5 THE COURT: MR. FRANK.

6 MR. FRANK: GOOD MORNING. IT WAS SUCH A LONG  
7 HEARING.

8 YOUR HONOR, FOR THE RECORD, MS. QUINTERO IS NOW  
9 PRESENT BEFORE THE COURT. WE HAD ANTICIPATED THE MANNER OF  
10 PROCEEDING ON BEHALF OF BOTH DEFENDANTS WITH A PLEA OF GUILTY  
11 BEFORE YOUR HONOR.

12 MR. CROWLEY, WHO PRESENTS MR. RAMIREZ, I UNDERSTAND  
13 IS IN ANOTHER COURT AND EXPECTS TO BE HERE THIS AFTERNOON. I  
14 DON'T KNOW -- I WOULD IMAGINE YOUR HONOR'S PREFERENCE WOULD BE  
15 TO PROCEED WITH BOTH DEFENDANTS AT THE SAME TIME.

16 THE COURT: BEYOND THAT, WHAT I PREFER TO DO IS  
17 JUDGE MAJOR IS TAKING PLEAS RIGHT NOW. I PREFER THAT THIS  
18 MATTER GO DOWN IN FRONT OF JUDGE MAJOR AND LET HER TAKE THE  
19 PLEA IF THERE IS A PLEA TO BE TAKEN.

20 MR. FRANK: WHATEVER THE COURT PREFERS, OF COURSE.  
21 THERE ARE SOME ASPECTS OF THE PLEA AGREEMENT THAT BOTH  
22 MR. CROWLEY AND I THOUGHT WOULD BE HELPFUL FROM OUR  
23 PROSPECTIVE AND INSTRUCTIVE IF YOUR HONOR PRESIDED OVER THE  
24 PLEA.

25 THE COURT: FORECAST?

1                   MR. FRANK: WELL, NOT NECESSARILY A FORECAST, BUT IF  
2 THERE WAS A PROVISION OR TWO THAT WAS ESPECIALLY PROBLEMATIC  
3 FOR THE COURT THAT WOULD BE HELPFUL FOR US TO KNOW AT THIS  
4 POINT.

5                   ON THE OTHER HAND, IF YOUR HONOR TRUSTS THE  
6 ATTORNEYS FOR BOTH SIDES TO SUBMIT A JOINT RECOMMENDATION AND  
7 WOULD OTHERWISE, OF COURSE PENDING A PROBATION REPORT, BE  
8 COMFORTABLE WITH WHAT'S RECOMMENDED, THAT WOULD ALLEVIATE ONE  
9 OF THE MAIN CONCERNs WE HAD.

10                  THE COURT: WELL, SOUNDS LIKE I AM WALKING A FINE  
11 LINE. I AM NOT SUPPOSED TO BE INVOLVED IN THE PLEA AGREEMENT  
12 OR THE PLEA BARGAINING AT ALL. I HAVE JUST LOOKED AT THE  
13 CHARGES.

14                  READING BETWEEN THE LINES -- I HAVEN'T SEEN THE PLEA  
15 AGREEMENT -- I WILL FAIRLY EVALUATE WHAT COMES TO ME,  
16 MR. FRANK, AT THE POINT THAT THERE IS A PLEA. I AM ASSUMING  
17 THAT MAYBE THERE WAS A MINOR ROLE RECOMMENDATION AND I HAVE A  
18 BIT OF A PROBLEM WITH THAT THAN SOME OTHERS, PARTICULARLY  
19 WHERE THERE IS A LARGE AMOUNT OF METHAMPHETAMINE INVOLVED.

20                  MR. FRANK: YOUR HONOR'S ASSUMPTION IS CORRECT.  
21 OF COURSE, THERE IS A DISTINCTION WITH RESPECT TO EACH OF THE  
22 PARTIES IN THE CASE IN TERMS OF -- THAT IS THE ASPECTS OF THE  
23 PLEA AGREEMENT THAT WE THOUGHT MIGHT BE IN ISSUE.

24                  THE COURT: LET ME TELL YOU, THEN -- I THINK YOU MAY  
25 KNOW THIS.

1 LET ME TELL YOU WHAT MY STANDARD IS. UP TO TWO  
2 POINTS I GO ALONG WITH THE MINOR ROLE RECOMMENDATION. I DEFER  
3 TO THE PARTIES. I DO THAT, BECAUSE PREDICTABILITY IN  
4 NEGOTIATING PLEA AGREEMENTS IS IMPORTANT AND PLEA AGREEMENTS  
5 ARE IMPORTANT TO THE SYSTEM.

6 SO THE PRODUCTIVE LEVEL UNDER THE GUIDELINES IS TWO  
7 POINTS. IN SOME INSTANCES WITH LARGE AMOUNTS OF DRUGS IT  
8 MAKES A RADICAL DIFFERENCE, WAY MORE THAN TWO POINTS.  
9 SOMETIMES IT EFFECTS A SIX- OR EIGHT-POINT DIFFERENCE UNDER  
10 THE GUIDELINES, WHICH AFTER ALL, ARE ADVISORY ANYWAY.

11 WHEN IT GOES BEYOND TWO POINTS, I HAVE SAID MANY  
12 TIMES I RESERVE THE RIGHT TO LOOK AT THE CASE AND MAKE MY OWN  
13 JUDGMENT BEFORE I MAKE THE FINDING THAT A PERSON HAD A MINOR  
14 ROLE. THAT IS, THAT A PERSON WAS SUBSTANTIALLY LESS CULPABLE  
15 THAN THE AVERAGE PARTICIPANT. THAT IS THE STANDARD FOR MINOR  
16 ROLE.

17 I HAVE SOMETIMES -- SOMEONE WOULD OFTEN DISAGREE. I  
18 THINK IN MANY INSTANCES IT HAS BECOME A PLEA BARGAINING TOOL  
19 IN THIS DISTRICT. IT DOESN'T NEED TO BE, BECAUSE THERE IS  
20 OTHER METHODS TO GET TO THAT REQUIRED NUMBER THAT I AM HAPPY  
21 TO DEFER TO.

22 FOR EXAMPLE, THE REFRAIN THAT I HEAR OFTEN IS WE ARE  
23 INUNDATED WITH DRUG CASES. THE U.S. ATTORNEY HAS UP TO FOUR  
24 POINTS FOR FAST TRACK, AND IF THEY MAKE AN INSTITUTIONAL  
25 JUDGMENT THAT A CASE EVEN INVOLVING A LARGE AMOUNT OF

1       METHAMPHETAMINE JUSTIFIES A FOUR-LEVEL DECREASE FOR FAST TRACK  
2       BECAUSE THEY HAVE SO MANY OF THEM, I WILL RESPECT THAT.

3               WHAT I OBJECT TO IS WHEN THEY ASK ME TO MAKE  
4       FINDINGS THAT I DON'T REALLY FIND, JUST BETWEEN YOU AND ME,  
5       ARE DISINGENUOUS FINDINGS.

6               I GET CASES, FOR EXAMPLE, WITH PEOPLE THAT HAVE  
7       CROSSED DOPE MANY TIMES. THEY ARE IN IT UP TO THEIR TIPS.  
8       THEY PARTICIPATE IN THE PLANNING AND EVERYTHING ELSE, AND I AM  
9       ASKED TO FIND THAT THAT PERSON HAD A MINOR ROLE, AND IN TRUTH  
10      AND EFFECT THERE IS NOTHING MINOR ABOUT IT. IT'S JUST A WAY  
11      TO GET TO A NUMBER. THAT I WON'T DO, BECAUSE IT WOULD REQUIRE  
12      ME TO SIGN ON TO A JUDGMENT AND MAKE FINDINGS THAT I DON'T  
13      BELIEVE TO BE TRUE.

14               NOW, ARE THERE DIFFERENCES BETWEEN DEFENDANTS IN  
15      CASES? OF COURSE. THIS MORNING, FOR EXAMPLE -- I GIVE YOU  
16      THIS BY WAY OF ILLUSTRATION -- I HAD ONE WHERE SOMEBODY WAS A  
17      PASSENGER IN A CAR -- I DON'T KNOW ANYTHING ABOUT THIS CASE.  
18      IT IS BY WAY OF ILLUSTRATION.

19               SOMEBODY WAS A PASSENGER, ASKED TO BE BROUGHT ALONG  
20      AS WINDOW DRESSING. I THINK THAT'S THE CLASSIC CASE FOR MINOR  
21      ROLE. BUT IF YOU ARE ASKING ME TO SIMPLY ACCEPT THE  
22      RECOMMENDATION AS TO MINOR ROLE IF IT HAS THE EFFECT OF MORE  
23      THAN A TWO-POINT DECREASE, I WON'T. I RESERVE THE RIGHT TO  
24      LOOK AT IT, TO MAKE AN INDEPENDENT JUDGMENT AND APPLY THE  
25      SECTION. AND IN SOME CASES I GO ALONG, AND IN SOME CASES I

1 DON'T.

2 IF THERE IS A WAY TO EFFECT THE SAME RESULT THROUGH  
3 OTHER GUIDELINE CALCULATIONS THAT DON'T REQUIRE ME TO SAY, "I  
4 FIND THIS," OTHER THAN I DEFER TO THE U.S. ATTORNEY THAT THEY  
5 ARE SO OVERWHELMED WITH CASES THAT FOUR POINTS FOR FAST TRACK  
6 IS APPROPRIATE, THEN FINE. I AM HAPPY TO GO ALONG WITH THAT.  
7 THAT'S THEIR BUSINESS.

8 BUT I JUST DON'T LIKE BEING PUT IN A POSITION TO  
9 HAVING TO SIGN ON TO SOMETHING THAT INTELLECTUALLY I DON'T  
10 BELIEVE IN, IN MY HEART OF HEARTS I DON'T BELIEVE IN, AND IT  
11 JUST FACILITATES A DEAL. I KNOW IT IS THE EASIER WAY TO GO,  
12 BUT I AM JUST NOT ON BOARD WITH THAT. DOES THAT ANSWER YOUR  
13 CONCERN?

14 MR. FRANK: IT DOES. WE HAVE HAD THIS DISCUSSION IN  
15 THE PAST. JUST AS A POINT OF INTEREST IN THIS MATTER, THE  
16 SUGGESTION IN THE PLEA AGREEMENT IS FOR JUST A MINUS TWO FOR  
17 ROLE. IT DOESN'T EXCEED THE AREA IN WHICH THE COURT HAS  
18 CONCERNS.

19 THE COURT: I WANT TO BE CLEAR ABOUT THIS. HERE IS  
20 WHAT IT SOMETIMES DOES IN THE LARGE DRUG CASES. IF YOU FIND  
21 MINOR ROLE THAT IT EFFECTS A REDUCTION FROM 38 TO 34 WHICH  
22 MEANS IT'S NOT REALLY TWO POINTS, IT'S SIX POINTS, OR  
23 SOMETIMES IN A CASE OF METHAMPHETAMINE -- AND AGAIN, I KNOW  
24 NOTHING ABOUT THIS CASE OTHER THAN I TOOK A BRIEF LOOK AT THE  
25 CHARGES, METHAMPHETAMINE -- IF IT IS OVER 1.5 KILOS THAT'S

1 BEING IMPORTED, THE GUIDELINES SAY PLUS TWO BEYOND THE  
2 STARTING GUIDELINE LEVEL, AND IF IT IS A ROLE -- IF IT'S A  
3 ROLE REDUCTION, THEN THAT DOESN'T APPLY.

4 SO CONCEIVABLY, IT COULD BE UP TO EIGHT IN A  
5 PARTICULAR CASE. ALL I AM TELLING YOU -- AND AGAIN, I HAVE NO  
6 BASIS FOR JUDGING THIS, AND I AM NOT GOING TO VIOLATE RULE 11  
7 BY GIVING YOU FORECASTS OF WHAT I AM LIKELY TO DO OTHER THAN  
8 TO TELL YOU I AM GOING TO FOLLOW THE RULES. I AM GOING TO  
9 LOOK AT IT CAREFULLY AND CONSCIENTIOUSLY AND COME TO MY BEST  
10 JUDGMENT.

11 AS I SAID, I AM NOT AGAINST GIVING MINOR ROLE IN AN  
12 APPROPRIATE CASE, NOT AT ALL. AS I SAID, I DID IT THIS  
13 MORNING IN A CASE INVOLVING AMOUNTS OF METHAMPHETAMINE OVER  
14 ONE AND A HALF KILOS WITH THE PASSENGER THAT I WAS CONVINCED  
15 WAS JUST BROUGHT ALONG TO ALLAY THE SUSPICION OF THE BORDER  
16 GUARDS.

17 THAT IS BY WAY OF ILLUSTRATION FOR YOU OF HOW I  
18 EVALUATE IT. IF THAT'S HELPFUL, THEN I AM HAPPY TO SEND YOU  
19 DOWN TO JUDGE MAJOR OR SET IT FOR TRIAL, ONE OF THE TWO.

20 MR. FRANK: IT IS HELPFUL, YOUR HONOR. AT LEAST ON  
21 BEHALF OF MS. QUINTERO. SHE DOES DESIRE TO ENTER A PLEA OF  
22 GUILTY, WHETHER YOUR HONOR WANTS TO ACCEPT THAT OR WANTS TO  
23 SEND IT TO JUDGE MAJOR.

24 THE COURT: I PREFER TO SEND IT TO THE MAGISTRATE  
25 JUDGE. SHE IS PREPARED TO TAKE IT RIGHT NOW.

1 I KNOW YOU PATIENTLY WAITED. YOU KNOW, MR. RAMIREZ,  
2 YOUR LAWYER IS TIED UP SOMEWHERE ELSE. HAS HE TALKED TO YOU  
3 ABOUT A POSSIBLE RESOLUTION OF THIS CASE?

4 THE DEFENDANT: NO, JUDGE. I JUST WANT TO END THIS,  
5 AND WHATEVER YOU WANT TO SAY WITH MINOR ROLE, JUST GIVE ME THE  
6 TIME.

7 THE COURT: I AM NOT SAYING THAT. WHAT I AM TELLING  
8 YOU IS I LOOK AT IT BEFORE I JUST AUTOMATICALLY CHECK THE BOX.

9 THE DEFENDANT: IT'S A HIGH AMOUNT OF DRUGS.

10 MS. LOPEZ: MAY I HAVE A MOMENT, YOUR HONOR?

11 THE COURT: YES.

12 MS. KANTER: YOUR HONOR, WHILE THEY ARE TALKING,  
13 I'LL MAKE MY APPEARANCE.

14 REBECCA KANTER FOR THE UNITED STATES.

15 MS. LOPEZ: YOUR HONOR, LINDA LOPEZ APPEARING FROM  
16 FEDERAL DEFENDERS.

17 I ADVISED HIM ON THAT.

18 THE COURT: MR. RAMIREZ, YOU DON'T WANT TO TALK TO  
19 ME ABOUT THE CASE NOW. I HAVEN'T PREJUDGED YOUR CASE AT ALL.  
20 I HAVE ONE PIECE OF PAPER WITH SOME ACCUSATIONS AGAINST YOU.  
21 YOU ARE PRESUMED TO BE NOT GUILTY AT THIS POINT.

22 MR. FRANK ASKED ME A QUESTION ABOUT HYPOTHETICALLY  
23 WHAT WOULD I BE LIKELY TO DO, AND I'M TELLING YOU, I'LL GIVE  
24 IT MY BEST JUDGMENT. I AM GOING TO BE FAIR ABOUT IT. I AM  
25 NOT A GUY THAT SIMPLY GOES ALONG FOR EXPEDIENCY. I DON'T DO

1 THAT. IT IS WHAT IT IS.

2 I'LL GIVE YOU A FAIR JUDGMENT ON IT. IF YOU  
3 CONTEMPLATE A MINOR ROLE AND YOU HAVE A MINOR ROLE, THEN YOU  
4 CAN EXPECT TO GET THAT. IF IN YOUR HEART OF HEARTS  
5 CONSIDERING WHAT YOU DID YOU DON'T THINK YOU WERE MINOR, THEN  
6 YOU SHOULDN'T EXPECT TO GET IT. THAT'S THE WAY IT'S GOING TO  
7 CUT. IT IS UP TO YOU WHETHER YOU WANT TO ACCEPT THE  
8 GOVERNMENT'S DEAL OR NOT. IF YOU DON'T, I'LL EMpanel A JURY  
9 AND YOU GET A FAIR TRIAL HERE. SO THOSE ARE EXCLUSIVELY YOUR  
10 CHOICES.

11 THE DEFENDANT: I ACCEPT IT.

12 MR. FRANK: I WILL TRY TO FIND MR. CROWLEY.

13 THE COURT: WE WILL SEND MS. QUINTERO'S CASE DOWN TO  
14 JUDGE MAJOR FORTHWITH. AND THEN AS SOON AS MR. CROWLEY HAD A  
15 CHANCE TO CONVERSE WITH MR. RAMIREZ, IF YOU DECIDE YOU WANT TO  
16 GO FORWARD WITH THE DISPOSITION, WE'LL SEND YOU DOWN TO THE  
17 MAGISTRATE JUDGE. IF YOU DON'T AND YOU WANT A TRIAL, I'LL SET  
18 IT FOR TRIAL. SO WAIT AND TALK TO YOUR LAWYER AND THEN YOU  
19 CAN LET ME KNOW. BUT FOR NOW, IF YOU'LL TAKE MS. QUINTERO  
20 DOWN TO JUDGE MAJOR. THEY ARE WAITING FOR YOU.

21 THE CLERK: THE MAXIMUM TRIAL DATE IS THE 27TH.

22 THE COURT: I NEED TO SET A TRIAL DATE HERE IN CASE  
23 THERE IS SOME GLITCH. NO MOTIONS HAVE BEEN FILED. I AM  
24 INFORMED THAT THE MAXIMUM TRIAL DATE IS THE 27TH OF DECEMBER.  
25 I DON'T WANT TO BE HERE THEN. I DON'T THINK YOU DO EITHER,

1 BUT IF DUTY CALLS, WE WILL BE HERE.

2 I AM GOING TO SET IT FOR TRIAL ON DECEMBER 27TH AT  
3 9 O'CLOCK. I WILL VACATE THAT UPON LEARNING THAT THERE HAS  
4 BEEN A DISPOSITION IN THE CASE.

5 DECEMBER 27TH AT 9 O'CLOCK FOR MOTIONS IN LIMINE AND  
6 AT 9:30 WE WILL EMPANEL A JURY.

7 MR. RAMIREZ, I THINK WHAT I'LL DO IS HAVE YOU WAIT  
8 UNTIL MR. CROWLEY GETS HERE AND THEN LET ME KNOW WHAT YOU WANT  
9 TO DO.

10 THE DEFENDANT: THANK YOU, YOUR HONOR.

11 --000--

12 THE CLERK: BACK ON NO. 29.

13 MR. CROWLEY: MICHAEL CROWLEY FOR MR. RAMIREZ.

14 THE COURT: MR. FRANK WAS HERE -- YOUR CLIENT WILL  
15 BE BROUGHT BACK OUT. I DON'T KNOW EXACTLY WHAT HIS INTENTION  
16 WAS, BUT I READ IT AS A CHANCE TO KIND OF GET A FORECAST FROM  
17 ME ABOUT WHETHER I WAS GOING TO GO ALONG WITH THE PLEA  
18 AGREEMENT I HAVEN'T EVEN SEEN.

19 ALL I HAVE IN BOTH CASES IS JUST A CHARGING PAPER  
20 AND NO MOTIONS OR ANYTHING ELSE. SO WE HAD A DISCUSSION ABOUT  
21 THAT IN THE ABSTRACT. I THINK IT HAD TO DO WITH MINOR ROLE,  
22 AND YOU KNOW WHAT MY STANDARD IS. I LOOK AND TRY TO  
23 FAITHFULLY APPLY THE SECTION, AND IF IT APPLIES, I APPLY IT.  
24 IF IT DOESN'T, I DON'T.

25 MR. CROWLEY: UNDERSTOOD.

1 THE COURT: ALL THAT OCCURRED IN FRONT OF  
2 MR. RAMIREZ. SO I THINK HE FLOWS WHERE I AM ON THAT.

3 IF YOU WANT TO GO DOWN IN FRONT OF JUDGE MAJOR, I'LL  
4 SEND YOU DOWN. SHE DOESN'T HAVE ANYTHING ELSE GOING ON. I  
5 THINK MR. FRANK IS DOWN THERE NOW. I SENT ONE OTHER CASE DOWN  
6 THERE, BUT I HAVE A FEELING IF THERE IS A DISPOSITION, YOU  
7 COULD BE HEARD FAIRLY QUICKLY. IT'S UP TO YOU. MR. RAMIREZ  
8 MIGHT ALSO WANT A JURY TRIAL. HE GETS THAT IF HE WANTS IT.

9 MR. CROWLEY: UNDERSTOOD.

10 AND I HAVE HAD A RECENT CONVERSATION WITH  
11 MR. RAMIREZ, AND I AM SURE THAT HE DOES WANT TO DO THE PLEA,  
12 SO WE WILL GO DOWN TO JUDGE MAJOR.

13 | THE COURT: SHE IS IN COURTROOM A.

14 THE SPEEDY TRIAL CLOCKS RUNS ON THE 27TH OF  
15 DECEMBER.

16 MR. CROWLEY: THAT'S WHY THE PLEA SHOULD HAPPEN  
17 TODAY.

18 THE COURT: IT HAS TO OR ELSE YOU BETTER GET YOUR  
19 BLUE SUIT CLEANED AND BE READY FOR JURY IMPANELMENT ON THE  
20 27TH OF DECEMBER AT 9 O'CLOCK FOR MOTIONS IN LIMINE.

21 9:30 FOR TRIAL ON DECEMBER 27TH UNLESS THERE IS A  
22 DISPOSITION IN THE CASE.

23 IF THERE IS, I'LL VACATE IT UPON NOTICE FROM YOU.

24 MR. CROWLEY: THANK YOU, YOUR HONOR.

25 --000--

1 I HEREBY CERTIFY THAT THE TESTIMONY  
2 ADDUCED IN THE FOREGOING MATTER IS  
3 A TRUE RECORD OF SAID PROCEEDINGS.

4 S/EVA OEMICK

5-15-08

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EVA OEMICK  
OFFICIAL COURT REPORTER

DATE